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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

JUN 27 2016

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
DIGITAL TRANSPORTATION CORPORATION
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
PRIVATE LINE TELECOMMUNICATIONS
SERVICES IN ARIZONA.

DOCKET NO. T-20937A-15-0290

DECISION NO. 75589

OPINION AND ORDER

DATE OF HEARING:

April 11, 2016

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Sasha Paternoster

APPEARANCES:

Mr. Timothy J. Sabo, SNELL & WILMER, L.L.P., on
behalf of the Applicant; and

Ms. Bridget Humphrey, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On August 14, 2015, Digital Transportation Corporation (“DTC” or “Applicant”) filed with the Arizona Corporation Commission (“Commission”) an application for a Certificate of Convenience and Necessity (“CC&N”) to provide private line telecommunications services in the State of Arizona.

On August 31, 2015, DTC filed a copy of the California Public Utilities Commission order granting DTC a Certificate of Public Convenience and Necessity in California.

Also on that date, DTC filed a Notice of Errata to correct the Applicant’s name on page 1 of its application.

On September 11, 2015, the Commission’s Utilities Division (“Staff”) filed an Insufficiency Letter, indicating DTC’s application lacked a copy of its Certificate of Good Standing.

On November 13, 2015, DTC filed a request for an extension of time to file its Certificate of Good Standing until December 10, 2015.

1 On December 22, 2015, DTC filed its Certificate of Good Standing.

2 On January 21, 2016, Staff filed a Sufficiency Letter stating that DTC's application for a CC&N
3 had met the sufficiency requirements as outlined in the Arizona Administrative Code ("A.A.C.").

4 On January 26, 2016, a Procedural Order was issued setting the date for hearing of April 11,
5 2016, and establishing other procedural deadlines.

6 On February 17, 2016, DTC filed Responses to Staff's First Set of Data Requests.

7 On February 26, 2016, DTC filed its Notice of Filing Affidavit of Publication indicating that
8 notice of the application and hearing date had been published in *The Arizona Republic*, a newspaper of
9 general circulation in Arizona.

10 On March 7, 2016, a Notice to the Parties was filed by the Administrative Law Judge ("ALJ")
11 assigned to the matter.

12 On March 14, 2016, Staff filed a Staff Report recommending approval of DTC's application,
13 subject to certain conditions.

14 On March 15, 2016, DTC filed a Motion to Appear Telephonically ("Motion") for the April 11,
15 2016, hearing, stating its witness, Steven Kasower, lives out of state and a personal appearance by Mr.
16 Kasower would necessitate significant travel time for what is generally a brief hearing.

17 On March 18, 2016, by Procedural Order, DTC's Motion was granted.

18 On April 5, 2016, by Procedural Order, DTC was directed to publish additional notice, by April
19 22, 2016, to allow interested parties time to file comments on the application and/or request
20 intervention in this matter as the original notice failed to include the information.

21 On April 11, 2016, a full public hearing was held as scheduled before a duly authorized ALJ of
22 the Commission. DTC and Staff appeared through counsel and presented testimony and evidence. No
23 members of the public appeared to give comments on the application.

24 On April 26, 2016, DTC filed an Affidavit of Publication, affirming notice of the application
25 and hearing date had been published in *The Arizona Republic*, consistent with the April 5, 2016,
26 Procedural Order.

27 No intervention requests or customer comments have been filed with respect to this matter.

28 * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. DTC is a privately held, foreign S-corporation organized under the laws of California and authorized to conduct business in Arizona.¹

2. On November 12, 2014, DTC filed an application with the Commission to provide private line telecommunications services on a statewide basis in Arizona. DTC's application also requested a determination that the Applicant's proposed services are competitive in Arizona.

3. Notice of DTC's application was given in accordance with the law.

4. Staff recommends approval of DTC's application for a CC&N to provide private line transport telecommunications services in Arizona, subject to the following conditions:

- (a) DTC complies with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
- (b) DTC be required to notify the Commission immediately upon changes to the Applicant's name, address, or telephone number;
- (c) DTC cooperates with Commission investigations including, but not limited to, customer complaints;
- (d) The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by DTC and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value information provided was not given substantial weight in this analysis; and
- (e) The Commission authorize DTC to discount its rates and service charges to the marginal cost of providing services.

5. Staff further recommends that DTC's CC&N be considered null and void after due process if DTC fails to comply with the following conditions:

- (f) DTC shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to

¹ Certificate of Good Standing docketed on December 22, 2015; Transcript at 17.

providing service, whichever comes first. The tariffs submitted shall coincide with the Application;

(g) DTC shall notify the Commission through a compliance filing within 30 days of the commencement of service to customers; and

(h) DTC shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). DTC will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

6. Staff also recommends DTC's proposed services be classified as competitive given the availability of alternatives, the inability of the Applicant to adversely affect the local exchange or long distance markets, and DTC's lack of market power.

Technical Capability

7. DTC states it plans to build and provide private line services to commercial clients in Arizona via dark fiber optic infrastructure.² The infrastructure will include buried conduit, fiber optic cables, and telecommunications vaults within the sidewalk and/or manhole vaults in the streets.³ DTC does not intend to provide dial tone, internet, VOIP, or video services over the fiber optic cables.⁴

8. Currently, DTC is authorized to provide competitive facilities-based and resold local exchange and interexchange telecommunications services in California.⁵ DTC also has an application pending in Nevada.

9. DTC's team of officers and managers have a combined thirty-three (33) years of experience in the telecommunications industry.⁶

10. DTC does not intend to have any employees within Arizona but will utilize licensed subcontractors for work needed to be completed in Arizona.⁷

11. In the event of physical breach damage, DTC will supply emergency repair through subcontracted personnel available by pagers and telephone.⁸

² Staff Report at 1; Tr. at 7-8.

³ Staff Report at 1.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id. at 2.

⁸ Id. at 1-2; Tr. at 13-14.

1 12. Staff believes DTC has the technical capabilities to provide its proposed services in
2 Arizona.

3 **Financial Capabilities**

4 13. DTC provided unaudited financial statements for the twelve (12) months ending
5 December 31, 2013, listing total assets of \$50,208; total negative equity of \$17,792; and a negative net
6 income of \$16,769. For the twelve (12) months ending December 31, 2014, DTC listed total assets of
7 \$38,636; total negative equity of \$29,364; and a net income of \$11,572.⁹

8 14. Staff believes DTC has the financial capabilities to provide its proposed services in
9 Arizona.

10 **Rates and Charges**

11 15. Staff believes that DTC will have to compete with other incumbent local exchange
12 carriers ("ILECs"), and various competitive local exchange carriers ("CLECs"), and interexchange
13 carriers ("IXCs") in Arizona in order to gain new customers. Staff states it does not believe DTC will
14 be able to exert market power given its status as a new entrant in the market.¹⁰

15 16. Staff states that in general, rates for competitive services are not set according to rate of
16 return regulation. Staff believes that DTC's proposed rates are just and reasonable based on the rates
17 of comparable providers and considering DTC's services are targeted for commercial business entities
18 capable of protecting their business interests through negotiation of rates.¹¹ Staff states that while it
19 considered the fair value rate base ("FVRB") information submitted by DTC, that information was not
20 afforded substantial weight in Staff's analysis.¹²

21 17. While the Commission allows competitive telecommunications service companies
22 flexible pricing per A.A.C. R14-2-1109, companies are required to file a tariff for each competitive
23 service that includes a maximum rate and an effective rate to be charged. As DTC will not provide
24 services to residential end users, DTC's customers will be commercial business entities that will
25 generally negotiate individual case basis rates.¹³

26 ⁹ Staff Report at 2.

27 ¹⁰ Id.

28 ¹¹ Id.

¹² Id.

¹³ Id.

18. Pursuant to A.A.C. R14-2-1109, the rates charged for each service DTC proposes to provide may not be less than DTC's total service long-run incremental cost of providing service.¹⁴

Complaint Information

19. Staff states that the Commission's Consumer Services Section of the Utilities Division reported that no complaints, inquiries, or opinions have been filed against DTC from January 1, 2012 to January 26, 2016.¹⁵ According to Staff, DTC is in good standing with the Commission's Corporations Division.¹⁶

20. Per the Staff Report, a search of the Federal Communications Commission's website for DTC returned no formal or informal complaint proceedings against DTC or any of its officers, directors, or managers.¹⁷

21. As of the filing of the Staff Report, DTC was authorized to provide telecommunications services in California only. Staff contacted the California Public Utilities Commission and found that DTC has been authorized to provide telecommunications services in California since 2012 and no complaints have been filed.¹⁸

22. According to DTC, it has not had an application for service denied or had its authority to provide service revoked, and Staff's research did not uncover any denied applications or revocations of authority.¹⁹

23. DTC's application states that none of its officers, directors, nor partners have been or are currently involved in any formal or informal complaint proceedings before any state or federal regulatory agency, commission, administrative, or law enforcement agency.²⁰

24. Staff verified that DTC has no formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency involving DTC or any of its officers, directors, or managers.²¹

¹⁴ Staff Report at 3.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

1 **Competitive Review**

2 25. DTC's application requests that its proposed telecommunications services in Arizona
3 be classified as competitive. Staff believes DTC's proposed services should be classified as
4 competitive because DTC will have to compete with CLECs and ILECs to gain customers; there are
5 alternative providers to DTC's proposed services; IXC, ILECs, and CLECs each hold a substantial
6 share of the market; and DTC will not have the ability to adversely affect the local exchange or IXC
7 markets in Arizona.²²

8 26. Based on the above factors, Staff concludes that DTC's proposed services should be
9 classified as competitive.

10 27. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

11 **CONCLUSIONS OF LAW**

12 1. DTC is a public service corporation within the meaning of Article XV of the Arizona
13 Constitution, A.R.S. §§ 40-281 and 40-282.

14 2. The Commission has jurisdiction over DTC and the subject matter of the application.

15 3. Notice of the application was given in accordance with the law.

16 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
17 CC&N to provide competitive telecommunication services.

18 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
19 Statutes, it is in the public interest for DTC to provide the private line telecommunications services as
20 set forth in the application.

21 6. DTC is a fit and proper entity to receive a CC&N authorizing it to provide intrastate
22 telecommunications services in Arizona, subject to Staff's recommendations as set forth herein.

23 7. DTC's fair value rate base is not useful in determining just and reasonable rates for the
24 competitive services it proposes to provide to Arizona customers.

25 8. The telecommunications services DTC intends to provide are competitive within
26 Arizona.

27
28 ²² Staff Report at 3-5.

9. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for DTC to establish rates and charges that are not less than DTC's total service long-run incremental costs of providing the competitive services approved herein.

10. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Digital Transportation Corporation for a Certificate of Convenience and Necessity to provide private line telecommunications service in Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 4 and 5.

IT IS FURTHER ORDERED that Digital Transportation Corporation's telecommunications services are competitive in Arizona.

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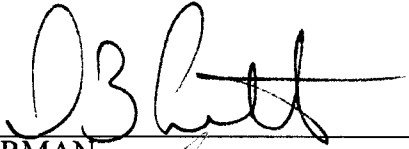
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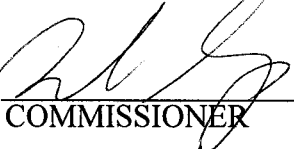
IT IS FURTHER ORDERED that if Digital Transportation Corporation fails to comply with the Staff recommendation described in Findings of Fact No. 5, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

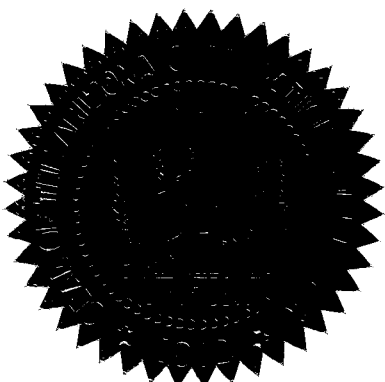

CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 27th day of June 2016.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SP:aw

1 SERVICE LIST FOR:

DIGITAL TRANSPORTATION CORPORATION

2 DOCKET NO.:

T-20937A-15-0290

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